

MCA 50/12



**U.S. Customs and
Border Protection**

March 14, 2011

MEMORANDUM FOR: Patrol Agents in Charge
Rio Grande Valley Sector

FROM:

(b)(6)(b)(7)(C) (b)(6)(b)(7)(C)
Chief Patrol Agent
Rio Grande Valley Sector

SUBJECT: Change to Expedited Removal Threshold Criteria

The Rio Grande Valley (RGV) Border Patrol Sector has modified the Expedited Removal (ER) criteria as it relates to an illegal alien's immigration history. Effective immediately, the arrest threshold for amenable aliens eligible for ER has been lowered to two apprehensions from five arrests previously required. To be clear on this issue, upon the alien's second arrest, they are amenable for ER proceedings.

(b)(7)(E)

Expedited Removal grants Border Patrol agents in the field the authority to formally remove certain aliens from the United States without further hearing or review unless the alien indicates an intention to apply for asylum, expresses fear of persecution, a fear of torture or a fear of return to his or her country.

The use of Expedited Removal orders will have a deterrent effect and make it possible to pursue future criminal prosecution against those who continue to enter the United States in violation of immigration law. (b)(7)(E)

(b)(7)(E)

Now, pursuant to a notice published in the Federal Register, expedited removal proceedings will apply to aliens who are:

- Present in the United States without having been admitted or paroled following inspection by a U.S. Customs and Border Protection Officer at a designate port-of-entry; and
- Encountered by a Border Patrol agent within 100 air miles of the U.S. international border and who have not established to the satisfaction of the agent that they have been physically present in the U.S. continuously for the fourteen-day (14 day) period immediately prior to the date of encounter.

In order to apply ER to nationals from contiguous countries, Mexican and Canada, who are otherwise amenable to ER, there must be supporting evidence of aggravating circumstances such as:

- Criminal history; and
- Immigration violations (smuggler, guide, *at least two (2) illegal entries*, etc.).

Expedited Removal will not apply to aliens who are:

- Unaccompanied Alien Juveniles;
- Cubans;
- Verified members of the class action settlement in American Baptist Church (ABC) vs Thornburg.

ABC class membership is defined solely by nationality and date of the first entry, as follows:

- Any Guatemalan who first entered the United States on or before October 1, 1990; and
- Any El Salvadoran who first entered the United States on or before September 19, 1990.

Eligibility for benefits under the agreement may be lost if class members are:

- Identified under National Security Grounds;
- Convicted of an aggravated felony as defined in Immigration and Nationality Act (INA) section 101(a)(43);
- Apprehended at time of entry after December 19, 1990; and
- CIMA with over 180 days in jail (minimum 181).

Only an asylum officer or immigration judge can determine ineligibility and even after a determination of ineligibility has been made, the class member cannot be removed for 30 days after the determination, in order to have time to challenge the determination in federal court.

The agent should determine whether the alien has a potential benefit under the INA (whether or not an application has been filed) that would provide the alien with relief from removal. In order to preclude denying an alien any potential benefit, the agent will not apply ER in those cases.

There may be other individuals for whom the use of ER is not appropriate for example, persons who appear to have mental health issues or diminished mental capacity. (b)(7)(E)

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(b)(7)(E) If you have any questions, they should be directed to Assistant Chief Patrol Agent (b)(6)(b)(7)(C) at (956) (b)(6)(b)(7)(C)